

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CLIFFORD SCHUETT,

Petitioner,

v.

U.S. MARSHALS, *et al.*,

Respondents.

Case No. 2:20-cv-00212-RFB-EJY

ORDER

Clifford Schuett, a federal prisoner currently incarcerated at the Nevada Southern Detention Center in Pahrump, Nevada, initiated this action on January 30, 2020, by filing a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. (ECF No. 1-1).

Schuett did not pay the filing fee for this action but filed an Application to Proceed *In Forma Pauperis*. (ECF No. 1). Schuett's application is not on the required form and is incomplete in that it does not include a certificate signed by a prison officer certifying the amount of funds in his institutional accounts. See D. Nev. Civ. R. LSR 1-1, 1-2. The Court will deny Schuett's *in forma pauperis* application and dismiss this action without prejudice, primarily for that reason.

1 Furthermore, Schuett's petition pursuant to 28 U.S.C. § 2241 is frivolous on its
2 face. Schuett claims that he is serving a four-month prison sentence because his federal
3 supervised release was revoked on the basis of false charges. (ECF No. 1-1).

4 "A motion under [28 U.S.C. § 2255] is generally the exclusive remedy for a federal
5 prisoner who seeks to challenge the legality of confinement." Muth v. Fondren, 676 F.3d
6 815, 818 (9th Cir. 2012), cert. denied, 568 U.S. 894 (2012); Harrison v. Ollison, 519 F.3d
7 952, 955 (9th Cir. 2008). See also 28 U.S.C. § 2255(e). Generally, a federal prisoner may
8 file a habeas petition under 28 U.S.C. § 2241 only to attack the "execution" of his
9 sentence, not to attack its validity. Hernandez v. Campbell, 204 F.3d 861, 864 (9th Cir.
10 2000) (citations omitted); Porter v. Adams, 244 F.3d 1006, 1007 (9th Cir. 2001).

11 The Court takes judicial notice of the proceedings governing Petitioner's conviction
12 in case No. 2:14-cr-00364-JAD-GWF-1. On January 15, 2020, Schuett was sentenced to
13 the term of incarceration he is currently serving. ECF No. 309, No. 2:14-cr-00364-JAD-
14 GWF-1. Since he was sentenced, Schuett filed several *pro se* motions in that case (ECF
15 Nos. 310, 313, 315, 317, 318 and 319), including at least two in which he claims that he
16 is incarcerated based on false charges (ECF Nos. 315, 319), which were subsequently
17 stricken. ECF No. 324, No. 2:14-cr-00364-JAD-GWF-1. Schuett makes no allegation that
18 a motion under 28 U.S.C. § 2255 is "inadequate or ineffective to test the legality of his
19 detention." See 28 U.S.C. § 2255(e). Therefore, a motion under 28 U.S.C. § 2255 is
20 Schuett's exclusive remedy and the Court dismisses the action on this additional basis.

21 **IT IS THEREFORE ORDERED** that Petitioner's Application to Proceed in District
22 Court Without Prepaying Fees or Costs (ECF No. 1) is **DENIED**.

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1 **IT IS FURTHER ORDERED** that this action is dismissed without prejudice.

2 **IT IS FURTHER ORDERED** that the Clerk of Court is directed to enter judgment
3 accordingly.

4 DATED this 16th day of July, 2020.

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7 RICHARD F. BOULWARE, II,
8 UNITED STATES DISTRICT JUDGE
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